



MIAMI-DADE COUNTY, FLORIDA
DEPARTMENT OF REGULATORY AND ECONOMIC RESOURCES

Chairperson
Alfonso Fernandez-Fraga, P.E.

Vice-Chairperson
Gregory Pierce

Sergeant of Arms
Thomas Utterback

Board Members
J. Robert Barnes, R.A.
Juan Dalla Rizza, P.E.
Rolando Diaz, P.E.
William Derrer
Mario R. Espineira, Jr.
Chief Virgil Fernandez
Carmen Garcia, R.A.
Jesus Gomez
Herbert Gopman, P.E.
Richard Horton
Enrique Salvador
Roce Simpson
Deede Weithorn
Robert Yaffe

Staff
Michael Goolsby
Kathy Charles
Yvonne Bell

Secretary of the Board
Juliana H. Salas, P.E.

BOARD OF RULES AND APPEALS
11805 S.W. 26th Street (Coral Way), Rm. 230
Miami, Florida 33175
TEL (786) 315-2573 FAX (786) 315-2570
www.miamidade.gov/building

Transmittal Date: February 11th, 2016

AGENDA
BOARD OF RULES AND APPEALS
FEBRUARY 18TH, 2016

Minutes of: January 21st, 2016

Time

APPEAL

1:00 1. **Fernandez, Ben** Ltr. 02/05/16 RE: **Appeal of Building Official**
(AP-1602.1/B) City of Miami Beach
234 Washington Avenue
FBC 5th Edition (2014 Res, Section R202)
Denial of Building Permit/
Height Requirements for Townhomes

REPORT

1:10 1. **Diaz, Rolando** Memo 02/03/16 RE: Certification of Building Official
(RE-1602.1) Plans Examiners and Inspectors
February 2016

BOARD DISCUSSION

1:15 1. **Gonzalez, Eduardo** To be Given RE: Assistant County Attorney Presentation
(DIS-1602.1) Sunshine Law Review

PROBABLE CAUSE AND FORMAL HEARING AGENDA FEBRUARY 2016

1:30 **Agenda Items To be Heard (Following Regular Meeting)**

Pursuant to F.S. 286.0105, any person who decides to appeal any decision made by the Board of Rules and Appeals with respect to any matter considered at its meeting or hearing will need a record of the proceedings. Such person may need to ensure that a verbatim record of the proceedings is made, including the testimony and evidence upon which the appeal is to be based.

Notice is also given pursuant to Dade County Ordinance 91-22 that any person appearing before the Board of Rules and Appeals as a lobbyist must register with the Clerk of the Board of County Commissioners and pay the required fee. Miami-Dade County provides equal access and equal opportunity in employment and does not discriminate on the basis of disability in its programs or services. If you need a sign language interpreter or materials in an alternate format for this meeting, please contact Kathy Charles, Board Administrator, at (786) 315-2571 to request the information.

Multiple members of individual community councils may be present.

Note: Time listed is an approximate of the time item is scheduled to be heard. Ultimate scheduling within the hearing is at the sole discretion of the Board. If you wish to be heard, you must be ready to appear at any time during the scheduled meeting.

Department of Regulatory and Economic Resources



11805 S.W. 26th Street, (Coral Way)
Miami, Florida 33175
Tel. (786) 315-2573 Fax (786) 315-2570

BOARD OF RULES AND APPEALS AGENDA ITEM COVER SHEET

Date: February 18th, 2016

AGEN: 1602.1

No. (AP-1602.1/B)

Appeal #1

Mr. Ben Fernandez, Bercow, Radell and Fernandez, is appealing the decision of the Building Official for City of Miami Beach regarding the denial of a building permit for the property located at 234 Washington Avenue. He explains that his client was seeking a building permit for a new townhome, but were denied based on the height of the proposed townhomes being identified as incorrect. Mr. Fernandez further explains that the Florida Building Code (FBC), 5th Edition (2014, Residential, Section R202), does not establish a maximum height for townhome development.

The Building Official opinion is attached.

Staff opinion is attached.



BERCOW RADELL & FERNANDEZ
ZONING, LAND USE AND ENVIRONMENTAL LAW

Direct: 305-377-6235
E-Mail: BFernandez@BRZoningLaw.com

VIA E-MAIL

February 5, 2016

Board of Rules and Appeals
Attn: Secretary
11805 SW 26th Street, Room 230
Miami, FL 33175

Re: Appeal of Miami Beach Building Official Determination concerning 234
Washington Avenue, Miami Beach, Florida

Dear Secretary:

This law firm represents 234 Washington, LLC in relation to the enclosed appeal of the City of Miami Beach Building Official's determination concerning the Building Permit (Application number B1302190), which seeks a building permit for a new townhome development at 234 Washington Avenue.

The Appellant's appeal is based on the fact that the Florida Building Code 5th Edition (2014, Residential, Section R202) does not establish a maximum height for a townhome development. Accordingly, the City of Miami Beach Building Official's determination, which denied the applicants building permit approval based on the height of the proposed townhomes, is incorrect and must be reversed.

The Appellant submitted a Building Permit application for a new townhome development that contains only three (3) habitable stories, a basement parking level and an accessible roof area. The FBCB defines a townhouse as:

TOWNHOUSE. A single-family dwelling unit constructed in a group of three or more attached units with property line separating each unit in which each unit extends from the foundation to roof and with open space on at least two sides.

Board of Rules and Appeals

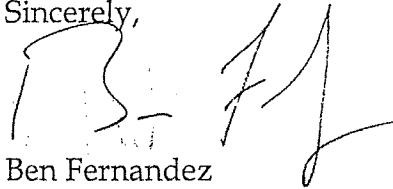
February 5, 2016

Page 2

Based on the foregoing definition, the Appellant's proposed project is correctly categorized as a "townhouse" project, as the project is comprised of separate town home units. The fact that there are separate townhome dwelling units, also means that the project meets the definition of an R-3 Residential occupancy, as there are no buildings with more than two units proposed.

For all of the foregoing reasons, we hereby appeal the Building Official's determination and request that the Board of Rules and Appeals find that the proposed project is properly classified as an R-3 Townhome project.

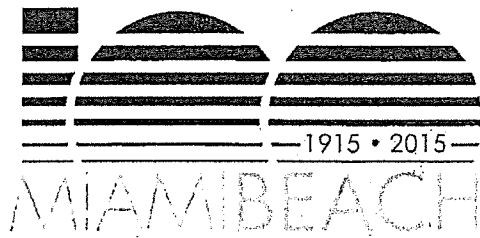
Sincerely,

A handwritten signature in black ink, appearing to read "B. Fernandez", written over a faint, illegible stamp.

Ben Fernandez

BF/bl

Enclosures



City of Miami Beach, 1700 Convention Center Drive, Miami Beach, FL 33139, www.miamibeachfl.gov

Building Department, Administration
Tel: 305.673.7610, E-mail: marianofernandez@miamibeachfl.gov

VIA HAND DELIVERY

February 2, 2016

Ben Fernandez, Esq.
Mickey Marrero, Esq.
Bercow Radell & Fernandez, PLLC
200 South Biscayne Boulevard, Suite 850
Miami, FL 33131

Dear Mr. Fernandez and Mr. Marrero

Re: 234 Washington Avenue, Miami Beach, Florida

The purpose of this letter is to advise you that as the Building Official for the City of Miami Beach, I have denied the building permit for the reference property based on the following reason(s):

- Pursuant to the Florida Building Residential, the proposed building exceeds three (3) stories in height and fails to meet or rather exceeds the maximum criteria to qualify as a townhome development under the City code.

Should you have any questions or desire to appeal this decision to the Miami-Dade County Board of Rules and Appeals.

Sincerely,


Mariano V. Fernandez, PE
Director/Building Official
City of Miami Beach Building Department
1700 Convention Center Drive, 2nd Floor
Miami Beach, FL 33139

Memorandum



Date: February 11, 2016

To: Michael Goolsby, Director
Board and Code Administration Division

From: Eduardo Fernandez
Code Compliance and Training Officer, Building 

Subject: Appeal of Building Official's Decision - 234 Washington Ave.

INTRODUCTION

The Appellant, Mr. Ben Fernandez from Bercow Radell & Fernandez Zoning, Land Use and Environmental Law, Incorporated is appealing the decision of the Building Official of the City of Miami Beach, Mr. Mariano Fernandez, P.E.

The Appellant is disputing the City of Miami Beach Building Official's decision to deny the building permit application for a proposed new townhouse development at 234 Washington Avenue Miami Beach, Florida. The process number for the proposed construction is B1302190.

The Building Official has based his decision to deny the permit application on the grounds that the construction cannot be classified as an R-3 townhouse as it exceeds three stories in height.

It appears as shown on the drawing submitted, the proposed development will be comprised of four attached units in a four story structure with five floors. Additionally, there are no property lines between units.

STAFF ANALYSIS

A structure with three or more attached units could be classified as a townhouse (Group R-3) when there is a property line between the units with a yard or public way on at least on two sides. If such structure is three stories or less, the construction is regulated by the Florida Building Code, Residential volume. Should the structure contain more than three stories, the construction is regulated by the Florida Building Code, Building volume.

In this case, there are no property lines between the units. Consequently, regardless of the number of stories, this structure cannot be defined as a Group R-3 townhouse. The 5th Edition Florida Building Code, Building definition of "townhouse" is shown below:

TOWNHOUSE.

A single-family dwelling unit constructed in a group of three or more attached units with property lines separating each unit in which each unit extends from foundation to roof and with a yard or public way on at least two sides.

Although, this structure's configuration may resemble a townhouse there are no requisite property lines between the units. **As a result, this type of structure must be classified as a Group R-2 apartment house and is subject to the Florida Building Code, Building volume.**

RECOMMENDATION

Staff recommends denial of this appeal, since the proposed development is not in harmony with the classification of a townhouse as stipulated in the building code.